APPENDIX A

Public Interest Payphones

Summary

By directive of the Telecommunications Act of 1996, pay phones have been deregulated and efforts have been made to remove regulatory and economic barriers to competition. Both the Act and the FCC rules implementing the pay phone provisions caution that as the industry deregulates, incentives to retain certain unprofitable yet necessary payphones may get removed.

The FCC has directed state public utility commissions to determine whether deregulation will result in a lost of pay phones serving a public interest in their states and, if so, to devise a way of resolving the problem.

Staff has analyzed this issue as part of a broader rulemaking dealing with pay phone consumer protection rules. Staff determined that it was too early to determine whether pay phone deregulation and competition would cause serious loss in pay phones that serve a public interest. No evidence was found to indicate that there would be serious immediate consequences resulting from deregulation. Instead, the review appears to indicate that a combination of a competitive market and local government vigilance may provide better public pay phone service than is currently provided.

Background

On September 20, 1996, the Federal Communications Commission (FCC) adopted a Report and Order implementing Section 276 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996.[168]

In the Report and Order, the FCC adopted new rules and policies governing the pay phone industry with the goal of fostering a more competitive pay phone industry. The new policies included eliminating certain subsidies related to the pay phone investments of local telephone companies and requiring that pay phones be compensated for all calls, except for 911 emergency calls.

The Report and Order also dealt with the directive in Section 276(b)(2) of the Telecommunications Act of 1996 requiring the FCC to "determine whether public interest pay phones, which are provided in the interest of public health, safety and welfare in locations where there would not otherwise be a pay phone, should be maintained, and if so, ensure that such public interest pay phones are supported fairly and equitably."

The FCC addressed this issue by saying that "states are better equipped than the Commission to respond to geographic and socio-economic factors affecting the need for such pay phones that are too diverse to be effectively addressed on a national basis."

Instead, the FCC adopted guidelines for use by the states in establishing public interest pay phones. The guidelines are intended to ensure that any subsidies used to pay for

[168]Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order, FCC 96-388 (rel. September 20, 1996).

public interest pay phones are generated and spent without creating a competitive disadvantage or advantage to any set of players.

The FCC directed each state to review whether it should to take any measures to ensure the availability of pay phones that serve a public interest need.

The FCC outlined some options for dealing with public interest pay phones. A state may choose to fund public interest pay phones from its general revenues through a process that ensures that companies providing such pay phones are fairly compensated and in a manner that does not otherwise affect competitive balance.

A state or local government may contract with a pay phone or telecommunications company for pay phone service in areas that serve an identified public interest. These contracts could be arranged so as to offset the cost of an unprofitable pay phone with pay phones located in more profitable locations. Or the local government, could as a course of providing emergency services for its citizens, ensure that pay phones or calling stations capable of contacting emergency service personnel are readily available in their communities.

States may also address the need for public interest pay phones by adopting appropriate rules in conjunction with their responsibilities for ensuring universal service pursuant to Section 254(f) of the 1996 Act.

As part of the WUTC's pay phone rulemaking (Docket No. UT-970301), staff requested information from telephone companies, local governments and the public that would aid in determining the threshold question of whether public interest pay phones will need to be maintained with a subsidy program. Staff also sought comment and data on whether public entities could take a more active roll in ensuring availability of public interest pay phones and on how a state public interest pay phone support program might be constructed.

Four incumbent local exchange companies responded to staff's questions. All four companies indicated they had removed pay phones in the last year due to unprofitability. U S West, which initiated a systematic review of all of its pay phone locations in Washington, claims that it has initially targeted 475 unprofitable pay phones for possible removal. As of July 1997, 182 of those pay phones had been removed and 42 had been converted to semipublic status, meaning that the location owner compensates U S West for the provision of the pay phone. TDS Telecom with local service companies of McDaniel and Lewis River wrote that it had pulled 24 pay phones since the Report and Order was issued. GTE-NW indicated it had removed five pay phones during that same period while United Telephone Company listed three pay phones removed. There was no indication whether any of these pay phones were considered pay phones serving a public interest need.

King County, the only county government to comment, said it had not lost any pay phones yet but that it had experience in working with pay phone providers to ensure that its citizens' needs were met. Seattle, the only city to comment, indicated it would like to take more responsibility for the policing of pay phones, mainly from the perspective of reducing the use of pay phones for alleged illicit activities.

The only other community-based organization reflected a different perspective. A letter from the Bay Center Association indicated that the community had recently lost its only publicly-accessible pay phones.

Public Counsel supports a creation of a public interest pay phone program. In Public Counsel's view, the WUTC should administer the program funding but the decision of where to place public interest pay phones should be left to "those governmental bodies better suited for determine public need."

While the Report and Order eliminated the ability for local telephone companies to include pay phone costs into their investment base for determining access charges, the FCC order also required that all calls, except for 911 calls, be compensated. The estimation by the FCC is that the average pay phone receives approximately 130 uncompensated toll-free calls per month. The FCC has ordered that long-distance carriers which sell toll-free service will have to compensate pay phone providers for each call made. Until a system can devised to provide per-call compensation, the FCC set an interim amount based on a fixed monthly amount per pay phone of $45.85 cents. Payment of the interim amount is in dispute and has been remanded by the reviewing court back to the FCC.

The industry generally agreed that the potential for compensation for previously uncompensated calls as well as the ability to raise their coin rate for local calls will make some previously unprofitable pay phones profitable.

None of the commenters objected to the possibility of including support of public interest pay phones within a new state universal service program. However, U S West and GTE both urged that the state allow the market to develop and respond first before establishing a program.

Discussion

While there are pay phones being removed from certain locations in the state, staff has no way of determining whether these locations have served a public interest need nor can it determine if they will be replaced by a competitor's pay phone. For instance, a subsequent letter from the Bay Center Association indicated that a new pay phone had been installed in the community.

Determining public interest remains a subjective decision. Comments from the various parties did not pin down a more detailed definition of public interest than what the federal Act already provides: "health, safety and public welfare." Arguably just about any telephone meets that need and there are countless locations in Washington lacking a pay phone which would meet that vague criteria. Public Counsel suggested more specific criteria such public recreation areas in remote locations, high crime risk areas, and public and private institutions serving low-income or risk groups.

While these locations are deserving of public phones, they do not necessary suggest a need for a separate program designed to establish pay phones. A separate program may work in conflict with other activities which might serve public interest needs more efficiently, such as the state's universal service program designed to ensure affordable service in high cost areas, the increased application and decreased cost of personal wireless communications service, the increased revenues for pay phones from toll-free calls and higher local coin rates and recognition by public entities of their responsibility to ensure that their citizens can communicate in situations where health, safety and public welfare are threatened,

Commenting parties were in general agreement that the most likely problem will occur in remote locations. Pay phones in urban areas where there is a high transient population and a low percentage of households with telephones are usually very profitable. While staff does not at this time recommend including public interest pay phones as a separate component to a state universal service program, it does recommend that the rate for a public access line serving a pay phone in a universal service eligible territory should be priced to reflect whatever subsidies are available to other business lines in that service area.

Given the relative early stage of pay phone deregulation, staff believes it would be premature to reach a firm conclusion. At this time, staff recommends holding off on any specific legislative action establishing a public interest pay phone program. The WUTC should track complaints, if any, regarding the lack of pay phone service and should work with local governments in helping them identify and satisfy their public interest communications needs.

8. **<u>Recommendation:</u> Washington should not establish a public interest pay phone program at this time.** There is no evidence at present that there is an insufficient number of pay phones or that pay phones necessary for public safety are lacking. Furthermore, there is no indication that deregulation will make such phones more scarce. The WUTC should track complaints, if any, regarding the lack of pay phone service and should work with local governments in helping them identify and satisfy there public interest communication needs. Should conditions change, WUTC would revisit the issue.

<u>Legislative Action:</u> No action is needed at this time.